

No. 105. merely creating an obligation on Charles Crichton to denude, but as an exercise of the power to alter reserved by the deed 1751, and the case the same as if Charles had not been mentioned in it.

The Lords (7th July, 1797,) “ repelled the objection;” and, upon advising a reclaiming petition, with answers, they with one dissentient voice “ adhered.”

For the Heritable Creditors, *Rolland, M. Ross.*

*Alt. Tait, John Clerk.*

*Clerk, Menzies.*

D. D.

*Fac. Coll. No. 54. p. 121.*

1798. *January 31.*

The TRUSTEES of MRS. CALDERWOOD DURHAM *against* ROBERT GRAHAM.

No. 106.  
The objection to a precept of *clare constat*, that it did not sufficiently specify the character of the vassal, repelled.

Alexander Muirhead, in his son David's contract of marriage, disposed certain lands to him, and the heirs-male of the marriage, and other substitutes. The contract contained procuratory and precept. David made use only of the latter, upon which infeftment followed.

Upon his death, Alexander, the only son of the marriage, expedite a general service, as heir of provision to his father, “ conform to the contract.” And having thus taken up the unexecuted procuratory contained in it, he obtained a charter of resignation, upon which he was infeft. He afterwards granted a precept of *clare constat* in his own favour. The precept narrated his right to the superiority, in consequence of the charter of resignation; and that it appeared, from authentic instruments and documents produced, that his father died infeft in the lands, in terms of the contract by which the lands were conveyed to him, “ and the heirs therein mentioned.” The precept adds, “ And that I am nearest and lawful heir of the said David Muirhead, my father,” “ and desirous to consolidate the property and superiority;” and directs sasine to be given to himself, “ as heir aforesaid.” Alexander took infeftment on the precept, and afterwards sold the land to the predecessor of Mrs. Calderwood Durham.

She again sold them to Robert Graham; and having died before part of the price was payable, her trustees claimed the remainder.

Upon this, Mr. Graham, in a suspension, contended, that he was not in safety to pay the price to the chargers, *inter alia*, because Mrs. Calderwood Durham was not feudally vested in the property of the lands: That Alexander Muirhead's precept of *clare constat*, in his own favour, was inept, from its being granted to him as nearest and lawful heir “ to his father;” from which description it did not necessarily follow, that Alexander was heir of provision, in terms of the contract, which was his title to the lands: That the matter was not mended by the reference to other deeds in the precept, as a precept, like a service, must fix the character of the vassal, without the aid of extrinsic evidence: And that, therefore, the property of the lands remained *in hereditate jacente* of David Muirhead.

The chargers answered, That the precept, when taken with the deeds to which it referred, and which must be considered as part of it, contained every specification necessary. No. 106.

The Lord Ordinary reported the cause on informations.

The Lords were of opinion, that the meaning of the precept was sufficiently clear. And they considered the point fixed by the decision, 16th January, 1798, The Creditors of Alexander Crichton against the Society for propagating Christian Knowledge, and Alexander Wood, *supra*; and unanimously found the letters orderly proceeded.

Lord Ordinary, *Armadales*.

For the Chargers, *H. Erskine, J. W. Murray*.

Alt. *Ar. Campbell, Ja. Graham*.

Clerk, *Home*.

*D. D.*

*Fac. Coll. No. 58. p. 134.*

Method of obtaining Infertment by Heirs and Apprisers; see INFERTMENT.

Superior acquiring Gift of his own Ward, Marriage, &c. must communicate the Benefit to his Vassals; see JUS SUPERVENIENS AUCTORI, &c.

Infertment, its Effects, and when necessary; see INFERTMENT.

Form and Solemnities of Sasine; see SASINE.

Services by the Vassal to the Superior; see PERSONAL SERVICES.

Superior of a Burgh of Barony, his Powers; see BURGH OF BARONY.

Irritancies *ob non Solutum Canonem*; see IRRITANCY.

See APPENDIX.